



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**[Docket DARS-2022-0030]**

**RIN 0750-AL67**

**Defense Federal Acquisition Regulation Supplement: Update of Challenge Period for Validation of Asserted Restrictions on Technical Data and Computer Software (DFARS Case 2022-D016)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** DoD is seeking information that will assist in the development of a revision to the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012, which addresses the validation of proprietary data restrictions. In addition to the request for written comments on this advance notice of proposed rulemaking, DoD will hold a public meeting to hear the views of interested parties.

**DATES:** Comments on the advance notice of proposed rulemaking should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to be considered in the formation of a proposed rule.

*Public Meeting:* A virtual public meeting will be held on January 26, 2023, from 1:00 p.m. to 5:00 p.m., Eastern time. The public meeting will end at the stated time, or when the discussion ends, whichever comes first.

*Registration:* Registration to attend the public meeting must be received no later than close of business on January 19, 2023. Information on how to register for the public meeting may be found under the **SUPPLEMENTARY INFORMATION** section of this notice.

**ADDRESSES:** *Public Meeting:* A virtual public meeting will be held using Zoom video conferencing software.

*Submission of Comments:* Submit comments identified by DFARS Case 2022-D016, using any of the following methods:

- o *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for "DFARS Case 2022-D016." Select "Comment" and follow the instructions to submit a comment. Please include "DFARS Case 2022-D016" on any attached documents.

- o *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2022-D016 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** David E. Johnson, telephone 202-913-5764.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

DoD is seeking information from experts and interested parties in the Government and the private sector that will assist in the development of a revision to the DFARS to implement section 815(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81). This statute applies to DoD only; it does not impact other Federal agencies. Section 815(b) amended 10 U.S.C. 2321 (redesignated as 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction.

DoD previously published proposed DFARS revisions to implement these statutory revisions as part of DFARS Case 2012-D022 on June 16, 2016, at 81 FR 39481. That case was suspended during the pendency of the Government-Industry Advisory Panel on Technical Data Rights (the 813 Panel) pursuant to section 813 of the NDAA for FY 2016. As part of the resumption and reorganization of the DFARS data rights cases after the conclusion of the 813 Panel, this statutory subject matter has been broken out in this separate case due to the distinct subject matter and limited nature of the statutory revisions.

### **II. Public Meeting**

DoD is interested in continuing a dialogue with experts and interested parties in the Government and the private sector regarding amending the DFARS to implement section 815(b) of the NDAA for FY 2012.

*Registration:* Individuals wishing to participate in the virtual meeting must register by January 19, 2023, to facilitate entry to the meeting. Interested parties may register for the meeting by sending the following information via email to *osd.dfars@mail.mil* and including "Public Meeting, DFARS Case 2022-D016" in the subject line of the message:

- Full name.
- Valid email address, which will be used for admittance to the meeting.
- Valid telephone number, which will serve as a secondary connection method. Registrants must provide the telephone number they plan on using to connect to the virtual meeting.
- Company or organization name.
- Whether the individual desires to make a presentation.

Pre-registered individuals will receive instructions for connecting using the Zoom video conferencing software not more than one week before the meeting is scheduled to commence.

*Presentations:* Presentations will be limited to 5 minutes per company or organization. This limit may be subject to adjustment, depending on the number of entities requesting to present, in order to ensure adequate time for discussion. If you wish to make a presentation, please submit an electronic

copy of your presentation via email to [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil) no later than the registration date for the specific meeting. Each presentation should be in PowerPoint to facilitate projection during the public meeting and should include the presenter's name, title, organization affiliation, telephone number, and email address on the cover page.

*Correspondence, Comments, and Presentations:* Please cite "Public Meeting, DFARS Case 2022-D016" in all correspondence related to the public meeting. There will be no transcription at the meeting. The submitted presentations will be the only record of the public meeting and will be posted to the following website at the conclusion of the public meeting:

[https://www.acq.osd.mil/dpap/dars/technical\\_data\\_rights.html](https://www.acq.osd.mil/dpap/dars/technical_data_rights.html).

### **III. Discussion and Analysis**

An initial draft of the proposed DFARS revisions is available in the Federal eRulemaking Portal at <https://www.regulations.gov>, by searching for "DFARS Case 2022-D016" and viewing the "Supporting & Related Material". The strawman is also available at [https://www.acq.osd.mil/dpap/dars/change\\_notices.html](https://www.acq.osd.mil/dpap/dars/change_notices.html) under the publication notice for DFARS Case 2022-D016. The following is a summary of DoD's proposed approach and the feedback DoD is seeking from industry and the public.

#### *A. Validation Period for Asserted Restrictions*

Consistent with 10 U.S.C. 2321(d)(2) (redesignated as 10 U.S.C. 3782(b)), DoD is proposing to revise the contract clause

at DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data. In particular, the proposed revisions to DFARS 252.227-7037(i) provide that the validation period for asserted restrictions is six years (rather than the three-year period in the current clause) from final payment on a contract or delivery of the technical data to the Government, whichever is later. The proposed revisions to paragraph (i) of the clause at 252.227-7037 also add the new statutory exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction. Technical corrections to the numbering of the revised paragraphs are also proposed.

Consistent with long-standing DFARS implementation of the procedures for validation of asserted restrictions, the proposed revisions required by statute for technical data have also been proposed for the analogous clause covering noncommercial computer software at DFARS 252.227-7019, Validation of Asserted Restrictions—Computer Software.

#### *B. Seeking Public Comment on Additional Topics*

In addition to seeking public comment on the substance of the draft DFARS revisions, DoD is also seeking information regarding any corresponding change in the burden, including associated costs or savings, resulting from contractors and subcontractors complying with the draft revised DFARS implementation. More specifically, DoD is seeking information regarding any anticipated increase or decrease in such burden and costs

relative to the burden and costs associated with complying with the current DFARS implementing language.

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

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